

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-cr-01423-KG

MICHAEL DAVID FOX,

Defendant.

DEFENDANT'S RESPONSE TO UNITED STATES OBJECTIONS TO THE PSR

MICHAEL DAVID FOX, through his attorney, Daniel Rubin, responds to the Government's Objections to the PSR.

This is not a hate crime. It is a crime directed at a government official. Mr. Fox, at the time of the offense, had a disdain for elected officials generally. It is the Government's burden to prove beyond a reasonable doubt otherwise. The Government has failed to do so.

Mr. Fox concurs with United States Probation's response, regarding this issue, in its Second Addendum to the Presentence Report. Doc. 40.

Mr. Fox clearly bought into theories that most would consider to be extreme and completely non-credible. Those extreme theories suggested that transgender individuals had taken over the government and other institutions. Those theories sadly exist, but it is not Mr. Fox who created them in order to target transgender people.

For context, here are three examples of crimes which were determined to be hate crimes:

1. On Feb. 19, 2020, after a five-day trial, a jury in Salt Lake City convicted Alan Covington for attacking three men with a metal pole because he believed the men were Mexican.

According to evidence presented at trial, on Nov. 27, 2018, Covington, armed with a metal pole and hatchet, entered a family-owned tire shop, Lopez Tires. Upon entering the shop, the defendant demanded to know if the men were Mexican. According to testimony at trial, the defendant shouted that he wanted to “Kill Mexicans” and then began swinging the metal pole at the business owner, his brother, and teenage son. Covington hit the teenage son with the metal pole, taking him to the ground and causing serious physical injury to his face. Covington continued his attack striking the father multiple times in the back and eventually turned his attack on the business owner’s brother, who was able to escape without injury and report the matter to police. Covington was apprehended by police near the tire shop, with a metal pole and a hatchet in his possession.

<https://www.justice.gov/opa/pr/utah-man-sentenced-hate-crime-attack-three-men>

2. On January 18, 2022, a federal grand jury returned a two-count indictment charging Killian, 31, of Midwest City, and co-defendant Devan Nathaniel Johnson, with physically assaulting a Black man, as well as the Black man’s white friend, in the parking lot of a Shawnee business on June 22, 2019. According to the indictment, the assault occurred because of the Black man’s race and color. Both Killian and Johnson are white. Killian pleaded guilty to one count of committing a hate crime in September 2022, and was sentenced on August 14, 2023.

“The defendants targeted a Black victim for a brutal attack simply because of the color of his skin,” said U.S. Attorney Robert J. Troester. <https://www.justice.gov/usao-wdok/pr/second-oklahoma-man-sentenced-federal-prison-role-racially-motivated-hate-crime>

3. A federal jury convicted the Defendant in the Tree of Life Synagogue in Pittsburgh, killing eleven people, critically wounding two others, and injuring five responding police officers in October 2018.

On October 27, 2018, the assailant entered the Tree of Life Synagogue during worship with multiple firearms and stated his desire to “kill Jews.” He shot and killed 11 congregants, injuring two other members of the congregation and five law enforcement officers. Evidence showed that the defendant meticulously planned his attack based on his violently antisemitic beliefs, reflected in dozens of online posts.

<https://www.justice.gov/opa/pr/jury-recommends-sentence-death-pennsylvania-man-convicted-tree-life-synagogue-shooting>

Defense presents to the Court three examples above of hate crimes. These are completely different crimes than that of Mr. Fox. The Government presents no crimes at all, including anything similar to Mr. Fox’s crime, that has ever been considered to be a hate crime. It is their burden to do so.

The Government presents nothing in Mr. Fox’s background to indicate there was any hatred towards transgender persons. It did not do so because there is no such evidence. The burden is on the Government, to prove beyond a reasonable doubt, that this was a hate crime. It has failed to do so.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
506 S Main Street, Suite 400
Las Cruces, NM 88001
(575) 527-7930
Electronically filed (December 7, 2023)
By: /s/ Daniel Rubin
Daniel Rubin
Assistant Federal Public Defender